

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE TRAVELERS INDEMNITY	:	CIVIL ACTION
COMPANY,	:	
Plaintiff,	:	
	:	
v.	:	
	:	
C. BRIAN SCHMALZ,	:	
Defendant.	:	NO. 01-361

MEMORANDUM ORDER

J.M. KELLY, J.

DECEMBER , 2001

Diane J. Solan ("Solan") has filed the present Motion to Intervene in the above-captioned action. This action was initially filed by The Travelers Indemnity Company ("Travelers") to enforce a covenant not to compete in the employment contract of its former employee, C. Brian Schmalz ("Schmalz"). After terminating his employment with Travelers, Schmalz was hired as Chief Executive Officer of Kemper Surety ("Kemper"), which Travelers alleged violated Schmalz's employment contract with Travelers. On March 29, 2001, the parties settled this case. The settlement included Kemper's agreement to: (1) cover economic obligations to Travelers for Schmalz; and (2) not hire any Travelers employees. It is undisputed that when Solan terminated her employment with Travelers, Kemper was barred from hiring her. Solan alleges that when she applied to work for Kemper, she was advised that the Settlement Agreement prevented Kemper from hiring her. Attempts by Kemper and Solan to obtain an exemption

from Travelers were rejected.

Solan's Motion to intervene has two prongs. Initially, Solan seeks to have the Court unseal those parts of the Settlement Agreement that relate to Kemper's obligation not to hire Traveler's employees. Solan was provided with the sections of the Settlement Agreement that relate to Kemper's agreement not to hire Traveler's employees. Accordingly, this issue is moot.

Solan then seeks to intervene in the underlying litigation in order to amend the Settlement Agreement to allow her to work for Kemper. Intervention of a third party in a civil proceeding is provided for in Federal Rule of Civil Procedure 24. Intervention, however, "will not be permitted to breath life into a 'nonexistant' law suit." Fuller v. Volk, 351 F.2d 323, 328 (3d Cir. 1965). Solan is trying to intervene in a settled case. While she may well have legitimate issues related to the effects of the Settlement Agreement in this action, she cannot address those issues with an attempt to open a settled case. Accordingly, it is ORDERED that the Motion to Intervene is DENIED.

BY THE COURT:

JAMES MCGIRR KELLY, J.